



Civil Judgments Against Appraisers

by Ted Boyer,
Division Director

In the course of monitoring case law from the various jurisdictions, we have noticed a slight increase in the number of judgments being entered against appraisers. We have

summarized a couple of those cases so that you can be aware of the types of actions or omissions or practices that can result in monetary damages.

In *Tuthill Finance v. Arthur Greenlaw et.al*, 1998 Conn. Super. Lexis 1253, an appraisal firm was retained by a mortgage brokerage company to appraise twelve unimproved lots in a subdivision in the state of Connecticut for the purposes of making a purchase money mortgage. Lender in the transaction was Tuthill Finance.

The appraisers valued the lots at \$715,000.00. The appraisers committed numerous errors including failure to mention the lots had rocky ledges and steep slopes, were non-conforming as to area, only four were buildable, the zoning was misstated and the report failed to use available comparable lot sales. The true market value of the lots was \$230,000.00.

The loan was made but the borrower defaulted and the lots were foreclosed and a deficiency judgment of \$604,942.16 was entered against the borrower. The lender filed suit against the appraisers in negligence and breach of contract. The appraisers defended on a number of theories, including the lack of privity of contract between the lender and the appraisers. (The mortgage broker was the client, not the lender).

The court entered judgment against the appraisers and for the lender in the sum of \$280,738.00.

The Superior Court of New Jersey also granted a civil judgment against an appraiser for professional malpractice in *Marie A. Johnson v. American Homestead Mortgage, et al.*, 703 A. 2d 984 (NJ App 1997). In that case, the appraiser under-valued a home for purposes of a reverse mortgage. By seriously miscalculating the square footage, the value conclusion was 25% less than actual market value. This created problems for the borrower when she subsequently sold the home because she had agreed to share the appreciation with the lender. Appreciation was calculated as any increase in value from the base line appraisal. In actuality, there had been little or no appreciation from the true market value at the time the mortgage loan was made. However, she did sell the home for more than the base line valuation. At closing she was required to pay the mortgage lender a share of the phantom appreciation from the erroneous base line appraisal.

The borrower was awarded a judgment against the appraiser for the amount she had to pay the lender (\$45,000.00) less any actual appreciation.

The question frequently arises as to whether a third party (non-client) can state a claim against an appraiser for negligent misrepresentation. The Supreme Court of Washington has answered the question in the affirmative in *Schaaf v. Highfield*, 896 P.2d 665 (Wash. 1995). Schaaf, a Desert Storm veteran purchased a home with a VA loan. After closing he discovered the roof severely leaked. He sued everyone involved, including the

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appraiser retained by the VA. The court held: "We conclude that a third party in Washington may state a claim for negligent misrepresentation against a real estate appraiser pursuant to Restatement (Second) of Torts § 552. The liability of a real estate appraiser in these circumstances extends only to those involved in the transaction that triggered the appraisal report, including, but not necessarily limited to, the buyer and the seller." The Court went on to say that the appraisers might also be liable to others who rely on the report.

Take the Online Appraisal Leap

by Michael Schafer

The demand for the electronic exchange of appraisal information is moving fast into the age of the Internet. While some appraisers will face this new frontier with unhurried skepticism, savvy appraisers will take advantage of this new market opportunity.

Years ago, the exchange of information between appraisers and lenders occurred by mail. This was a leisurely two-week cycle. The introduction of overnight delivery dropped the delivery time to days but increased the cost substantially. Then came the modem and dial-up transmission, which was replaced quickly with the speed and efficiency of the Internet.

Appraisers now have the ability to deliver completed appraisal reports in minutes. Once again, appraisers are on the verge of an industry-wide paradigm shift, and those who choose to remain loyal to old business practices may soon be out of business.

Today, EDI (electronic data interchange) is the one of the most talked about subjects in both the mortgage lending and appraisal industries. EDI is essentially a simple procedure where all the components of an appraisal report are placed into an "electronic envelope" and transmitted to the lender via the Internet.

Let's compare and contrast the traditional appraisal process with the EDI appraisal process.

Traditional Method:

- 1) Collect and write on a clipboard all the information to produce the report.
- 2) Search for comparables.
- 3) Record the relevant data on comparable properties.
- 4) Take the measurements of the structure.
- 5) Snap photos and hope you remember which address goes with which picture.
- 6) Drop the photos off for processing.
- 7) Drive back to the office and begin assimilating all the information.
- 8) Retype the information from the clipboard onto your PC.
- 9) Print it out.
- 10) Find the map.
- 11) Make a copy.
- 12) Stick the little tabs on the subject and comps.
- 13) Draw the sketch.
- 14) Produce the invoice.
- 15) Make copies.
- 16) Drive back to the photo center, pay for the photos, buy more film.
- 17) Stop by the supply store for more paper; go back to the office.
- 18) Sort the pictures; paste them onto the proper pages. Let the glue dry.
- 19) Collate all the pages.
- 20) Sign all the copies.
- 21) Package them up and address the envelope.
- 22) Call the courier or, if you are up against a tight deadline, hop in the car and drive across town to the lender, yourself.
- 23) Now go back to the office, label the negatives, and find room in the bulging cabinets to file away another report.



Utah Real Estate Appraiser Review

Purpose: To provide licensees with the information and education they need to be successful in competently serving the public

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That's lots of work for one \$200-300 report, and prices are going down or staying the same.

Online Technology:

Now, let's compare the laborious 23-step, old process with a new method, using new online appraisal technology.

- 1) We still do the fieldwork, noting the information on the newly developed hand-held PC.
- 2) Take photos with a digital camera storing images on the computer, a disc, or a mini CD-ROM for easy reuse.
- 3) Measure the property.
- 4) Photograph the comps.
- 5) Snap more photos, instantly knowing whether the shot was good because the image appears on the camera.
- 6) Go back to the office.
- 7) Upload the notes directly into the appraisal report.
- 8) Upload the photos to the photo page.
- 9) Draw the sketch.
- 10) Download the location maps and edit the final document.
- 11) Open your e-mail, drag and drop the report to the lender, and press SEND.

In less time than it takes to get to your car, your lender has the report! Your report is automatically archived on your PC for easy storage and future access.

Online methods significantly cut the cost and time required to produce an appraisal. This increases the number of appraisals that can be performed per day, not to mention your profit on each. Internal expenses are reduced or eliminated. No more film and processing. No more couriers or postage costs. Mileage and gasoline expenses are reduced. Other savings include less use of copiers, file cabinets and map books.

Appraisers who embrace technology will soon be sought after by lenders, especially now that Fannie Mae has introduced an interface that enables mortgage lenders to order online appraisals through its MornetPlus network.

Take the online appraisal technology leap today and you will increase your speed and profits.

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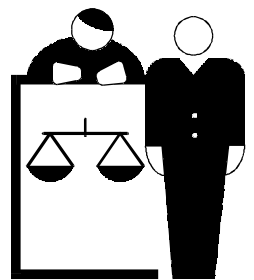
What to Avoid in Securing an Assignment

It has been reported that several creative, but illegal, methods of securing appraisal assignments are occurring in our state. Two verified examples are provided. The first is the promise by the appraiser to provide the lender with an expensive set of golf clubs for every ten appraisal assignment orders received. The second is a nice dinner for every three appraisal assignment orders received. Both breach Utah state law and the Uniform Standards of Professional Appraisal Practice (USPAP).

According to the management section of USPAP, "Disclosure of fees, commissions, or things of value connected to the *procurement* of an assignment should appear in the certification of a written report and in any transmittal letter in which conclusions are stated." (Emphasis added). Although this USPAP Ethics Rule does allow the appraiser to provide a client with a "finders fee," it must be properly disclosed. However, Utah State law supersedes USPAP. It states in 61-2b-29(7) that "...paying a *finder's fee* or *referral fee* to a person not registered [licensed] or certified under this chapter in connection with an appraisal of real estate of real property in this state" is grounds for disciplinary action which may include "revoking, suspending, or placing a person's registration [license] or certification on probation, denying a person's registration [license] or certification, ordering remedial education, and imposing a penalty upon a person not to exceed \$1000 per violation." (Inserts and emphasis added.)

Also, the Federal Real Estate Settlement Procedures Act (RESPA), 12USC 2607, prohibits any person from giving or receiving anything of value for the referral of a settlement service, including appraisals.

This type of business practice must stop. It eliminates fair competition and jeopardizes the protection of the public from fraudulent lending activity. The Division of Real Estate will vigorously prosecute any appraisers who violate these unprofessional and illegal practices.



AQB Looks at Requiring a College Degree for New Appraisers

In its recent meeting in San Diego, the Appraiser Qualifications Board (AQB) moved to create a task force to prepare a Model Appraiser Licensing Law and Administrative Code. The task force will be charged with creating a number of administrative forms such as applications for appraiser Certification, reciprocal license, temporary practice and others. The task force will also look at appraiser qualifications and the requirement of a college degree for Appraiser Certification and Licensure.

Serious consideration is apparently being reviewed by the AQB regarding changing the Appraiser Certification requirements. The AQB commented that the Model Law "project is timely since the AQB will be revising real property appraiser qualification content in the 2001-3 time frame."

The AQB will appoint nine active state regulators to the Board and will solicit recommendations from AARO for candidates for the task force.

During the meeting, the AQB adopted its previous exposure draft, implementing the rule that a client is not required for appraiser experience credit.

The Board also added to its work plan Advanced Personal Property Appraiser Qualifications. The Advanced Personal Property Appraiser Qualifications has been a very controversial subject, with many real estate appraisers and associations contending that the Board should avoid becoming involved in all personal property appraisal qualification criteria. Of the appraisal associations surveyed, more wanted the AQB to avoid the personal property work than those who favored the work. Of the individual personal property appraisers surveyed, a large majority wanted the work to continue. The project is subject to financing by The Appraisal Foundation from non-federal grant funds, as the Appraisal Subcommittee funding may be used only for real property appraiser projects.

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Disciplinary Sanctions

BATH, J. ROBERT, State-Certified Residential Appraiser, Gilbert, AZ. Renewal denied effective Sept. 16, 1999, based on failing to maintain adequate records, misrepresenting material facts, and egregious errors in his appraisals which suggest either competency problems or intentional mischaracterization.

BEXELL, STEVEN, Certified Residential Appraiser, Riverdale, UT. Certification renewed on probationary status due to failure to make monthly restitution payments in Second District Court Case 921900237

DALTON, ERIC, State-Certified Residential Appraiser, Draper, UT. Surrendered his certification effective Sept. 19, 1999 in lieu of continuing to respond to fourteen complaints against him under investigation by the Division. Mr. Dalton may not reapply for a new appraiser license or certification for at least five years, own or manage an appraisal company for at least five years, or work for a Utah Appraiser as a trainee, unclassified individual earning points for licensure or certification, as clerical support staff, or in any other capacity for at least five years. #AP94-10-30

EASTON, RICHARD E., State-Registered Appraiser, Magna, UT. Surrendered his registration effective Sept. 14, 1999 in lieu of continuing to respond to the Division's investigation. He may not reapply for a new appraiser license or certification for at least five years. #AP97-10-03

LOOS, CARL, Registered Appraiser, Provo, UT. In lieu of responding to the Division's investigation of three complaints against him, Loos surrendered his current registration and agreed

not to apply for a new registration, license, or certification for at least five years. Loos neither admitted nor denied the allegations in the complaints that he failed to use better comparables which had significantly lower prices than the ones he chose, that he reported inaccurate square footage in an appraisal, and that he appraised a property substantially in excess of the price at which other units in the same complex were listed for sale. #AP97-11-17, AP98-10-24, & AP99-04-09

PROWELL, KEVIN, Registered Appraiser, Sandy, UT. Registration renewed on probationary status due to a D.U.I. conviction.

TIDWELL, LINCOLN, Registered Appraiser, American Fork. Agreed to surrender his appraisal registration to the Division by August 20, 1999 and not to reapply for a new license for at least one year. Mr. Tidwell violated USPAP Rules 1-1(a) to 1-1(c), 1-4(b), and 2-1(a) in a March, 1998 appraisal of a property located at 10607 W. South Cover Road, Lot 166 Saratoga Springs, No. 3 Planned Unit Development, Utah County. #AP98-04-07.

Practicing appraisers need to possess the current Utah statute and rules, along with the most current edition of USPAP 2000 --- Available in February

Contact:

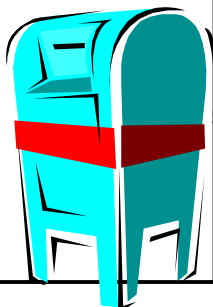
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If you pick them up:

USPAP -- \$6.50
Rules -- \$3.00

If we mail them:

USPAP -- \$8.50
Rules -- \$5.00



Top 10 Reasons to Be an Appraiser

by Joe Ibach, North Dakota Real Estate Appraiser Board Chairman

Top 10 reasons why it is great to be an appraiser:

10. Dazzle your friends with your knowledge of external obsolescence.

9. The wonderful world of rats, bats and spiders.

8. Be a part of a profession blamed for the collapse of the savings and loan industry.

7. See places in people's houses that usually require a search warrant to access.

6. Arouse the suspicion of an entire neighborhood when inspecting comparable sales.

5. Chance to really irritate annoying real estate salespersons.

4. Walk around holding a clipboard just like "Skip" down at the JiffyLube.

3. Spend hours writing volumes of supporting documentation to justify the market value of property you already decided when you pulled into the driveway.

2. See that some people really do hang those black velvet pictures of Elvis in their living rooms.

1. Be one of the handful of people who know that USPAP is not a medical test.

ASB Issues Summary of Changes for 2000 Edition of USPAP

The 2000 edition of USPAP will include changes to the Ethics and Competency Rules, Definitions, Standard Rules 1-2, 24, Standard 3, Standards 7 and 8 and Standards 9 and 10. A new Advisory Opinion (AO-19), on Unacceptable Assignment Conditions, was also approved. Numerous edits were made to existing Statements and Advisory Opinions to ensure consistency with the changes in Standards 7 and 8.

Other new features of the document include consecutive line numbers for reference and a more detailed index.

Between now and the end of this year (1999) the ASB will continue to address a solution to the issues surrounding Standards 4 and 5, expose proposed changes to Standard 5, and address outstanding questions relating to the use of confidential information.

Taken, in part, from The Accredited Review Appraiser, Vol. XIII, No. 3, Fall 1999.

USPAP Q&A

This communication by the Appraisal Standards Board (ASB) does not establish new standards or interpret existing standards. The ASB USPAP Q&A is issued to state and territory appraisal regulators to inform all states and territories of the ASB responses to questions raised by regulators and individuals; to illustrate the applicability of the Uniform Standards of Professional Appraisal Practice (USPAP) in specific situations; and to offer advice from the ASB for the resolution of appraisal issues and problems. The ASB USPAP Q&A do not constitute a legal opinion of the ASB

Question:

When I'm deciding whether departure is appropriate in a real property appraisal assignment, how do I figure out what my "peers" actions would be in performing the same or a similar assignment", as required by the Departure Rule?

Answer:

Although the Definition section of USPAP does not contain a definition of the term "peers", a good description of one's peers is provided in Statement 7:

"Appraiser's peers" are other competent, qualified appraisers who have expertise in similar types of assignments involving similar types of properties."

Appraiser's peers, therefore, may vary. An appraiser whose practice includes primarily urban single family residences will have different peers than one who specializes in dairy farms.

Standards Rule 1-1(b) requires appraisers to be aware of, understand, and correctly employ those recognized methods and techniques that are necessary to produce a credible appraisal.

The Competency Rule requires an appraiser "to have both the knowledge and the experience required to perform a specific appraisal service competently", and suggests a number of ways by which an appraiser can become competent, including personal study, association with others having the requisite knowledge and experience, and retention of experts.

Thus, USPAP suggests at least four ways for an appraiser to determine what his or her peers' actions would be in a specific situation: continuing education, personal research, association with competent appraisers and with other experts.

When confronted by the questions, "what would my peers' actions be", an appraiser can research it himself, ask experts

or refer to educational materials. However, the most direct way to find an answer is to develop and maintain relationships with competent appraisers, and to discuss with them what their actions would be in a similar assignment.

Question:

Is it okay for me to say in my appraisal report that I've done a Limited Appraisal, even though I didn't invoke the Departure Rule?

Answer: USPAP defines "Limited Appraisal" as:

"The act or process of developing an opinion of value or an opinion of value developed and resulting from invoking the DEPARTURE RULE."

By definition, then, if the Departure Rule is not invoked, an appraisal is not a Limited Appraisal. Further, all USPAP's reporting standards (Standards 2, 5, 8 and 10, and portions of Standards 3 and 6) require that in reporting a Limited Appraisal, an appraiser must "state and explain any permitted departures from applicable specific requirements." A report of a Limited Appraisal that lacks these required disclosures would violate USPAP; a report that disclosed departures that weren't actually taken would be misleading and so would also violate USPAP.

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Question:

What standard rule have I departed from when I don't inspect the interior of the subject property?

Answer:

USPAP has no specific requirements for inspecting a property's interior. Standards Rule 1-1(b) requires an appraiser to "not commit a substantial error of omission or commission that significantly affects an appraisal." The Comment to that Rule also states:

"In performing appraisal services, an appraiser must be certain that the gathering of factual information is conducted in a manner that is sufficiently diligent, given the scope of work identified according to Standards Rule 1-2(f)..."

Standards Rule 1-2(e)(I) requires that an appraiser identify a subject property's physical characteristics, including its location and physical attributes. But, note that the required

identification must be “relevant to the purpose and intended use of the appraisal”. If an interior inspection is not relevant, it is not required. Determining whether an interior inspection is relevant is a scope-of-work decision, as described in Standards Rule 1-2(f). The Comment to that standard rule states:

“An appraiser must not allow assignment conditions or other factors to limit the extent of research or analysis to such a degree that the resulting opinions and conclusions developed in an assignment are not credible in the context of the intended use of the appraisal.”

However, if information about the property interior is relevant, but impossible to ascertain by personal inspection, the Comment to Standards Rule 1-2(e) requires an appraiser to :

- obtain the necessary information before proceeding, or
- where possible, in compliance with Standards Rule 1-2(g), use an extraordinary assumption about such information.

Additional guidance about inspecting properties may be found in Advisory Opinion 2, “Inspection of Subject Property Real Estate”, Advisory Opinion 5, “Assistance in the Preparation of an Appraisal”, and Advisory Opinion 15, “Using the Departure Provision in Developing a Limited Appraisal.”

Question:

Can an appraiser prepare a retrospective appraisal, with an effective date of value as of five years ago, if the appraiser wasn’t even an appraiser five years ago?

Answer:

The appraiser must comply with the Competency Provision at the time the appraiser *develops* the appraisal, regardless of the effective date of value. If the appraiser is to develop a retrospective (or prospective) value opinion, the appraiser must be able—at the time he or she is performing the assignment—to deal with the nuances of such an assignment (e.g., to research data associated with the retrospective or prospective date and to analyze the data in light of market conditions as of that date.) It is not necessary for the appraiser to be, or to have been, a competent appraiser as of the effective date of value.

An appraiser could develop a retrospective appraisal with an effective date of value that is prior to the appraiser’s own date

of birth. Likewise, an appraiser could develop a prospective appraisal with an effective date of value that occurs after the date of his or her own death. These would be legitimate assignments that could be completed according to USPAP. Yet certainly in such cases the appraiser could not be considered to be a competent appraiser as of those effective dates of value.

Question:

Does Standard 3 apply to business valuation or personal property appraisal reports?

Answer:

Standard 3 of USPAP applies only to the review of real property appraisals. It does not apply to the review of business valuation or personal property appraisal reports.



Question:

I’ve been asked to “reassign” an appraisal performed for a mortgage lender to another mortgage lender. How do I respond to this request?

Answer:

This question is addressed in Advisory Opinion AO-10, *The Appraiser-Client Relationship*, in which it states:

“The appraiser has a personal obligation and a professional responsibility to avoid any action that could be considered misleading and to protect the confidential nature of the appraiser-client relationship. Simply changing the title page or transmittal letter of an appraisal report without full disclosure of the original appraiser-client relationship is misleading.”

When a party other than the client requests an appraisal report that identifies that party as the client, a subsequent appraiser-client relationship is being established; a second assignment is begun. The appraiser must protect the confidential nature of his/her relationship with the first client, in accordance with the Confidentiality section of the Ethics Rule.

You should treat the request for a *reassignment* as a request for a *new* assignment. You should obtain permission

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USPAP Q&A

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(preferably in writing) from the first client to proceed, and it must be understood by all parties that a second assignment with a different appraiser-client relationship is being established.

Question:

A client asked me not to perform a cost approach in an appraisal assignment, but he doesn't want me to provide a Limited Appraisal either. I have determined that the cost approach is relevant. Can I perform the cost approach and give it consideration in the reconciliation, but not include it in the report (which is a Summary Appraisal Report)?



Answer:

If you have determined that the cost approach is *applicable* in this assignment, though not necessary in order to result in opinions or conclusions that are credible, then the appraisal would be a Limited Appraisal if you omit the cost approach. To provide the client with a Limited Appraisal but allow him to believe that it is *not* a Limited Appraisal would be fraudulent and misleading—and clearly a violation of the Ethics Rule.

Further, Standards Rule 2-2(b)(ix) says the appraiser must, in a Summary Appraisal Report, “summarize the information analyzed, the appraisal procedures followed, and the reasoning that supports the analyses, opinions and conclusions.” This requirement would not be met if you performed appraisal procedures but did not summarize those procedures in the report. The client and intended users of the report might indeed be misled or confused if discussion of an important part of the appraisal process was omitted from the report and yet that part of process was relied upon.

You should discuss the assignment further with the client and find out why the client wants you to omit the cost approach yet doesn't want a Limited Appraisal. Perhaps there is some misunderstanding on his part about the concept of departure.

Question:

a) Jim, an independent contractor, works for my appraisal company on a regular basis. I have always kept all appraisal file documentation (including hard copies of appraisal reports, field notes, drawings, etc.) at my office. Now Jim wants to

keep the files relating to his work in his own possession. Under USPAP, which appraiser should keep the workfile?

b) Is the Record Keeping section of the Ethics upheld if an institutionally-employed appraiser ensures that his organization retains copies of his appraisal work for five years? Or, must the appraiser also maintain a personal file of all work performed?

c) A client's attorney requested that I supply all of my files/records regarding an assignment. Can I do this and still be in compliance with the record keeping requirements for USPAP? Also, what must I retain in my files as proof that the files are now the responsibility of the attorney? Will a simple letter from the client be sufficient?

Answer:

According to USPAP, the *appraiser*, not the appraiser's employer or client, is ultimately responsible for the retention of the workfile for the prescribed period. (See Record Keeping section of the Ethics Rule.) An appraiser who is employed by, or works in conjunction with, another party must make arrangements with that party to protect and preserve the workfile, and to allow the appraiser to make the workfile available to other parties (e.g., state appraiser regulatory agencies) when required by due process of law.

The ASB recognizes that there are a number of ways an appraiser who works for or with another party can ensure that files are retained so that the appraiser can have access to the files to meet the requirements of USPAP's Ethics Rule. For example, an appraiser and his employer or colleague may agree that the files will remain in the employer's or colleague's custody for the duration of the requisite retention period and that the appraiser will have access to those files, if needed.

USPAP does not dictate the form or format of workfile documentation. It is not necessary to include original documents in the file; photocopies and electronic files are acceptable as “true copies”. Because there have been cases where employers and others have denied appraisers access to workfiles, an appraiser may wish to make and retain copies of workfiles. However, USPAP does not address any specific manner by which an employer or contractor and appraiser should handle record retention. This is a business matter which should be arranged in the context of the employer---or contractor-appraiser relationship.

By the same token, provision of the workfile to a duly authorized party, such as a client's attorney could be, is permitted by USPAP. However, this does not relieve the appraiser of the responsibility for that workfile. At no time may an appraiser abdicate his or her responsibility for a workfile. Therefore, when an appraiser relinquishes possession of a file to a client or the client's representative, the appraiser should retain either a copy of the workfile or written reference to an agreement with the client that the appraiser will have access to the workfile if the need arises.

Question:

An appraiser included a building sketch with area calculations in his appraisal report. The review appraiser verified these calculations, and co-signed the appraisal report. A subsequent field review by an investigating member of a professional appraisal practice committee proved the measurements to be incorrect. The calculations in the appraisal report were correct, based on the incorrect measurements. Is the review appraiser responsible for the incorrect measurements?

Answer:

The answer is "yes". Whenever an appraiser signs an appraisal report, that appraiser takes *full* responsibility for the report, regardless of how the appraiser labels himself. Standards Rule 2-5, from which departure is not permitted, states:

An appraiser who signs a real property appraisal report prepared by another in any capacity accepts full responsibility for the appraisal and the contents of the appraisal report.



Comment: An appraiser acting as an employer or supervisor signing a report of an employee or subcontractor is as responsible as the individual preparing the appraisal for the content and conclusions of the appraisal and the report. Using a conditional label next to the signature of the employer or supervisor does not exempt the individual from adherence to these Standards...

In addition, Standard Rule 2-3 also requires that a signed certification be part of any written real property appraisal

report, and that the certification include the name of each individual who provided "significant professional assistance" in preparing the appraisal.

The issue of a review appraiser signing an appraisal report is addressed by the comment to Standard 3:

"...Reviewing is a distinctly different function from that addressed in Standards Rule 2-5. In accordance with Standards Rule 2-5, any appraiser who signs the appraisal report accepts full responsibility for the appraisal and the appraisal report. To avoid confusion between these two functions, review appraisers should not sign the report under review unless they intend to take the responsibility of a co-signer."

Question:

I know of appraisers who consistently conclude that the market value of any property they appraise is equal to the contract sale price. In doing so, they facilitate sales and financing of sales—which is apparently what keeps their clients happy.

Is this a violation of USPAP?

Answer:

A contract sale price can be a good indicator of a property's market value, and it may be logical and reasonable for the appraiser to conclude that they are the same. However, this is not always the case. In some situations, a contract price will exceed what is typical in a market and, in other situations, a contract price will be less than what is typical. A contract sale price, while a significant piece of market data, must not become a target in an appraisal assignment. Rather, competent analysis of relevant and credible market data must be the appraiser's basis for a market value conclusion.

If an appraiser consistently concludes that the contract sale price of any property they appraise equals market value, particularly when a competent analysis of credible market data indicates otherwise, the appraiser's impartiality, objectivity and independence appear to have been compromised. The Ethics Rule of USPAP clearly prohibits such a practice. The Conduct section of the Ethics Rule states, in part:

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USPAP Q&A

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"An appraiser must perform assignments with impartiality, objectivity, and independence and without accommodation of personal interests.

An appraiser must not accept an assignment that includes the reporting of predetermined opinions and conclusions.

An appraiser must not communicate assignment results in a misleading or fraudulent manner. An appraiser must not use or communicate a misleading or fraudulent report or knowingly permit an employee or other person to communicate a misleading or fraudulent report."

An appraiser must develop an opinion of market value impartially and objectively. An appraiser who selects only data that complements a contract sale price or analyzes data in a manner to purposefully support a contract sale price violates the Ethics Rule.

"Consider the postage stamp; its usefulness consists in the ability to stick to one thing 'til it gets there."

Josh Billings

What Are Responsibilities of a Supervisory Appraiser?

by Michael Christensen

The Utah Appraiser License and Certification Board has been hearing an increasing number of cases involving Registered Appraisers who have been unsuccessful in obtaining their Certified Residential status. It is difficult to deny an advanced license to anyone who has worked many years for their Certification; however, due to their lack of training, their lack of professional perspective, and their casual observance of the Uniform Standards of Professional Appraisal Practice (USPAP), the Board is unable to approve their Certification.

After completing the requisite classroom hours and experience, the applicant for Certification must provide samples of his/her work, present an appraisal log which outlines completed appraisal assignments, complete the required application paperwork, and submit it all to the Division of Real Estate. An Experience & Review Committee Member of the Appraiser Licensing and Certification Board then reviews the applicant's package for compliance with Utah State law and USPAP. A recommendation is then submitted to the Board for approval or denial. If the applicant desires to appeal the decision of the Board, he or she is provided the formal opportunity in a Licensee Application Hearing. It is in this forum that the Board is recognizing unprofessional

conduct by applicants, as well as the Certified supervisory appraisers who have signed their appraisal reports.

As noted in the New Webster's Dictionary, the word *supervise* means to "oversee" or "superintend." Are the Registered Appraisers in your office being properly supervised?

Apparently, in many cases they are not!

The supervising appraiser is

frequently

referred to as "the person who signs my reports." The Registered Appraisers who appeal to the Board after being denied are being directly hurt. By the time such a Registered Appraiser applies for Certification, hundreds of appraisals have been completed by that unqualified individual who has had little, if any, supervision. These inadequate and, sometimes, dishonest appraisal reports hurt the public, both individuals and institutions. It has been reported that a record number of home sellers are going to the closing of their sale in an "upside down" position; i.e., selling them for less than they owe. The public's trust is clearly being breached in many cases, mostly due to the lack of adequate supervision of Registered individuals in "training" by Certified Appraisers. As noted in the 1999 Edition of USPAP, Standards Rule 2-5 "An appraiser who signs a real property appraisal report prepared by another in any

capacity accepts full responsibility for the appraisal and the contents of the appraisal report."

Many inappropriate professional practices, including those listed below, are being identified during the appeal process in typical Licensee Application Hearings.

- Inadequate understanding of vital professional appraisal terminology
- Simple income property analyses deficiencies
- Disregard for contingency fee requirements in USPAP
- Inadequate understanding of depreciation methodology and application
- Inadequate record keeping (incomplete files)
- Inconsistent descriptions
- Inappropriately applied "canned" statements
- Unreasonable adjustments
- Improper/misleading certifications (extent of participation and inspection)
- Improper use of certification stamps

Look in the mirror and ask yourself this question, "What are my responsibilities as a supervisory appraiser?"

Thankfully, most appraisers are honest and actively pursuing professionalism in their offices. But, if your appraisal practice is described above, change it! The investigators of the Division of Real Estate are actively preparing many cases against supervisory appraisers for the Utah State Attorney General's Office to prosecute. The FBI is reportedly actively involved in many of these "fraudulent" cases as well.

Each appraiser's professional responsibility is, and must be, to the public. It is not your place to advocate for the lender, client, estate, borrower, court, etc. Your responsibility for advocacy in completing an appraisal assignment is to yourself! As the market changes, unprofessional appraisals which advocate inappropriate positions decrease in demand and prosecution of the perpetrators increases. Consistently honest appraisal work can allow you to be profitable in all market conditions.

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Are You Ethical???

by Jill Walters

Ethics is, and should be, a major part of our business. It was the primary topic of the Eighth Annual Conference of AARO, the Association of Appraiser Regulatory Officials as appraiser regulators from 35 states, federal appraisal officials, and others from the appraisal industry recently met in St. Louis, MO. Dr. Deborah Long, DREI, CRS, GRI, ethics specialist, educator and author from Chapel Hill, NC., gave an excellent interactive workshop on ethics to over 150 participants. She cited Dr. Lawrence Kolberg's research, which created a map of three levels of moral reasoning. They are:

- 1) Pre-conventional. Emphasis on avoiding punishments and getting rewards ('might makes right,' and 'look out for number one').
- 2) Conventional. Emphasis on social rules ('good girl and nice boy,' and 'law and order').
- 3) Post-conventional. Emphasis on moral principles ('the rules of society exist for the benefit of all,' and 'general universal principles determine right and wrong').

Where do you rate yourself? Dr. Long revealed a Gallup poll on the public's perception of honesty and ethical standards in different professions. Of the 26 professions mentioned, pharmacists and clergy were at the top and real estate agents were #19, beating out only lawyers, labor union leaders, congressmen, insurance salesmen, and car salesmen! Appraisers were not specified but may well fall into the real estate category!

The Ethics Provision (soon to be the Ethics Rule) in USPAP clearly states that the appraiser "must observe the highest standards of professional ethics" and "must perform ethically and competently . . . and not engage in conduct that is unlawful, unethical, or improper." For example, "the acceptance of compensation that is contingent upon the reporting of a predetermined value . . . is unethical;" "it is unethical for an appraiser to . . . communicate a misleading or fraudulent report;" and "an appraiser must protect the confidential nature of the appraiser-client relationship" are all parts of the Ethics Provision.

It behooves all appraisers to take seriously the ethics of our profession.

Used by permission from the *Mississippi Appraiser Update*, Fall 1998, Vol. 3, No. 3

For Your Information or, This and That

- Remember: appraiser licensees are not allowed to meet their continuing education requirements by taking video courses. Because video courses are allowed for *real estate* licensees, many appraisers think the same is true for their appraiser license. It's not.
- Those Registered Appraisers who are working to meet the requirements for a higher classification, and who have been using the old documentation forms for Certified Residential or Certified General, may still use those same forms *until May 1, 2001* for documenting their experience. You do not need to be concerned with copying all your information onto the new application form.
- All appraiser licensees are required to take a USPAP course each third time they renew. That "third-year-renewal" is figured from the *very first* time the appraiser licensed with the Division. Even if the appraiser has changed classifications (RA to LA, CR or CG), the third-year-renewal is still based on the original date of licensing.
- The Appraisal Institute has developed three different USPAP courses: 410 Standards - Part A, 420 Standards - Part B, and 430 Standards - Part C. The Utah Appraiser Board has advised that Part A *only* can meet the USPAP education requirement for preclicensing. However, both Parts A and C can be used to satisfy the "third-year renewal" education requirement. Remember, that for preclicensing purposes and for "third-year renewal" purposes, an exam needs to be taken and passed. Part B cannot be used for any continuing education requirement.

Company Says 24-hour Appraisal Near

(ATLANTA) Primis Inc., which has reduced turnaround time on residential property appraisals from 10 days to three days, says by the end of next year it will provide a one-day turnaround.

"We are committed to changing the expectations of the industry," said Primis CEO Jim Schaper. "No other service provider controls all the necessary components required to achieve such performance without sacrificing service and product quality."

Traditionally, appraisals and other property information have been pro-

vided by small, independent operators in a highly fragmented industry. Primis' vision is to become the primary provider for information such as appraisals, title, flood certifications, inspections and other property services.

Schaper said his company goal was ultimately to reduce turnaround time to less than a minute.

Reprinted with permission from the "Real Estate Intelligence Report", December 6, 1999

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**You Must Notify
the Division
-- in Writing --
Within 10 Days of:**

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- a change of personal address
- a change of business address
- a change of name
- a change of personal or business telephone number
- a conviction of a criminal offense
- a filing of bankruptcy